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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/886,740	06/21/2001	John Joseph Curro	7897R4	6713

27752 7590 03/31/2003

THE PROCTER & GAMBLE COMPANY
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EXAMINER	
BEFUMO, JENNA LEIGH	
ART UNIT	PAPER NUMBER
1771	6

DATE MAILED: 03/31/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/886,740	CURRO ET AL.	
	Examiner	Art Unit	
	Jenna-Leigh Befumo	1771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____ .

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-3 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-3 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on 21 June 2001 is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11)☐ The proposed drawing correction filed on _____ is: a)☐ approved b)☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12)☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____ .

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15)☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5 .
4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "104" has been used to designate both supply roll for the first web and the supply roll for the second web. It is noted that according to the specification, the supply roll for the second should be number 105. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

2. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "130" has been used to designate both the central layer before it is bonded to the outer layers and the nip formed between rolls 134 and 136. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

3. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they include the following reference sign not mentioned in the description: 102, in Figure 10. A proposed drawing correction, corrected drawings, or amendment to the specification to add the reference sign in the description, are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

4. The drawings are objected to because the copies of the photographs, Figures 8, 17A, and 17B are mostly black and it is impossible to tell what the picture is suppose to be of. A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Double Patenting

5. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington,* 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

6. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 9 of copending Application No. 09/886828. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the products claimed is identical, with only the preamble or intended use of the product differing between the claims.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

7. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 15 of copending Application No. 09/886730. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

8. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 6 – 10 of copending Application No. 09/886829. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

9. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 10 – 27 of copending Application No. 09/467938. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

10. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 9 and 21 – 30 of copending Application No. 09/584676. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is

identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 – 20 of copending Application No. 09/553641. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

12. Claims 1 – 3 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1 - 20 of copending Application No. 09/553871. Although the conflicting claims are not identical, they are not patentably distinct from each other because the structure of the product claimed is identical, having three layers, where the two outer layer are bonded together at bond sited with the third apertured layer disposed between those two layers.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

14. Claims 1 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al. (5,851,935) in view of McCormack et al. (5,964,742).

Srinivasan et al. discloses an elastomeric laminated fabric having two outer nonwoven carded webs thermally point bonded to an elastomeric film (abstract). When the multi-layer composite is thermally bonded under pressure the fibers in the carded web melt and elastomeric film melts forming an aperture in the film, but not in the thermoplastic fibers (column 4, line 64 – column 5, line 1). Instead, the thermoplastic fibers fuse together to form a thin compressed web upon cooling (column 5, lines 1 – 3). Hence, the melted thermoplastic fibers would qualify as the Applicant's melt weakened region. Since the film layer is apertures upon heating, the film is only located in the interior region between the outer layers and not at the bond sites.

Even though Srinivasan fails to teach that the bond sites have an aspect ratio of at least about 2, Srinivasan discloses that the bond pattern can have one of a number of different geometries (column 6, lines 54 – 56). McCormack et al. is drawn to thermally bonded laminates. McCormack et al. discloses that thermally bonding patterns comprising elements with an aspect ratio of 2 to 20 have an unexpectedly higher abrasion resistance and strength resistance. Additionally, the preamble limitations are considered to be intended use of the laminate materials and do not add further structure to the claimed structure. Thus, claims 1 – 3 are rejected.

15. Claims 1 – 3 are rejected under 35 U.S.C. 103(a) as being unpatentable over Palumbo (WO 96/10979).

Palumbo discloses a laminate with apertures comprising an upper layer, an intermediate, and a lower layer (page 3). The upper and lower layers are nonwoven webs (page 4). The intermediate layer is an elastic film comprising a thermoplastic elastomer (page 5). The elastic film would inherently have a greater elongation to break than the nonwoven outer layers. The laminate is produced by running the three layers through rollers with heated teeth which form the perforations in the laminate and thermally bond the layers together (page 7). The apertures would be located at the melt weakened region. Palumbo teaches that the outer layers are thermally bonded to each other at the edges of the perforations (page 7). Therefore, the middle layer would be located in an interior region formed by the outer regions. Finally, Palumbo discloses that the laminate is designed to be used as a coversheet in personal care products (page 1).

Palumbo discloses that the size and spacing of the perforation can be chosen according to the intended use (page 9). Further, Palumbo discloses the perforations can be the same as those described in EP-A-207904, which includes elliptical shape. Therefore, it would have been obvious to one of ordinary skill in the art choose the claimed aspect ratio, since it has been held that discovering an optimum value of a result effective variable involves only routine skill in the art. One of ordinary skill in the art would be motivated to choose the shape based on the strength of the laminate produced as well as the comfort of the fabric when it is used next to the skin. Additionally, the preamble limitations are considered to be intended use of the laminate materials and do not add further structure to the claimed structure. Thus, claims 1 – 3 are rejected.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jenna-Leigh Befumo whose telephone number is (703) 605-1170. The examiner can normally be reached on Monday - Friday (9:00 - 5:30).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Terrel Morris can be reached on (703) 308-2414. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9310 for regular communications and (703) 872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0661.

Jenna-Leigh Befumo
March 22, 2003

ELIZABETH M. COLE
PRIMARY EXAMINER